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OCT 19 2004

In re Application of
Burch et al.
Application No. 10/719,211
Filed: November 21, 2003
Attorney Docket No. P50383D2

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed August 11, 2004, to accord the above-identified application a filing date of November 21, 2003.

The petition is **dismissed**.

On November 21, 2003, the application was filed.

Petitioner filed:

- (1) 3 pages of drawings,
- (2) 3 pages of declaration,
- (3) 1 page of transmittal letter,
- (4) 6 pages of preliminary amendment,
- (5) 1 page of abstract, and
- (6) IDS and papers related to IDS.

On May 27, 2004, the Office of Initial Patent Examination mailed a Notice stating that a specification was not present and that a filing date had not been accorded and the filing date would be the date of receipt of a specification.

The first sheet of the Information Disclosure Statement lists many documents including WO 97/09042. The papers filed on November 21, 2003, included a copy of many of the documents listed including WO 97/09042.

Apparently, petitioner is alleging the Office should have treated WO 97/09042 as the application - specification, drawings, and claims.

If WO 97/09042 is used as the application, then the postcard receipt contradicts the facts alleged by petitioner. The postcard indicates 3 sheets of drawings were filed, while the file contains 4 sheets of drawings including 3 filed as part of the original "application" and one sheet filed as part of WO 97/09042. The Office also notes that the declaration fails to explicitly refer to WO 97/09042.

Petitioner has failed to prove the May 27, 2004 Notice was mailed in error and the \$130 petition fee will be charged to petitioner's deposit account.

Since the copy of WO 97/09042 was filed on November 21, 2003, with the application papers, the papers may be used as the application *upon grant of a petition*. The petition will not be granted at this time because petitioner has failed to state which set of drawings the Office should

use as part of the official application. Should the Office use the 3 sheets of drawings with one Figure on each sheet or should the Office use the one sheet of drawing which is included as part of the application?

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450


By facsimile: (703) 872-9306
 Attn: Office of Petitions

Any request for reconsideration must be filed within two months of the mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are not available.

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

The Office of Initial Patent Examination will be instructed that the petition was dismissed.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions